SOME CONSIDERATIONS ON THE TIMES WHEREIN MARRIAGE Is said to be Prohibited: IN TWO LETTERS From one CLERGY-MAN to another.

By *THO. BRETT*, L.L.D. Rector of *Rucking*, in the Diocese of *Canterbury*.

LONDON:

Printed by *J. L.* for JOHN WYATT, at the *Rose* in *Church Yard*. MDCCIX.

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Some CONSIDERATIONS *on the Times wherein Marriage is ſaid to be Prohibited: In a* LETTER *from one Clergy-man to another.*

SIR,

THERE having been a general Reprimand given to us at the laſt Viſitation, becauſe Many of us had Married Perſons by Banns during ſuch times as ſome ſay we are prohibited to Marry in; and being then told at we ſhould find what times thoſe were in *Lyndwood*, a Book hich it was ſaid, all Clergy-men ought to have, and that it as expected for the future that we ſhould not Marry any erſons without Licenſe within any of thoſe times: I thought my Duty to conſult *Lyndwood*, that ſo I might be ſatisfied ow far my Canonical Obedience would oblige me to comply ith this Order. For as I think my ſelf bound to obey my rdinary, where what he enjoyns is required by any Canon ceived in this Church: ſo where he ſhall command any thing t warranted by ſuch a Canon, I do not think my ſelf obli- d to yield Obedience. And now, becauſe you, and all the lergy of the Dioceſe are equally concerned with my ſelf in e Matter of this Charge given to us at the Viſitation, I ſup- oſe you may take it kindly if I ſend you the Reſult of my nquiries on this Subject: Eſpecially ſince you, and others of

my Brethren thought convenient to ask my Opinion in thi Point when this Injunction was given us.

Lyndwood was Official of the Arches, (and afterwards Biſhop of St. *Davids*, who Collected all the Provincial Conſtitutions made in *England* from the time of *Stephen Langton*, Archbiſhop of *Canterbury*, who held a Synod at *Oxford*, *A. D.* 1222. to the time of *Henry Chichely*, Archbiſhop of *Canterbury*, whoſe Conſtitutions were Publiſhed, *A. D.* 1415. And wrote a Commentary upon them. All which Canons and Conſtitutions, as far as they are not contrary to the Laws of the Land and Prerogative Royal, are ſtill in Force by Vertue of an Act of Parliament 25. *H.* 8. *cap.* 19. *in fin.* And therefore it is a Book which is neceſſary enough for every Clergy-man to have, if the Smallneſs of our Livings and Scarcity of the Book did not make the Price of it too much for our poor Purſes.

In this Book, under the Title *De Decimis & Oblationibus*, there is a Conſtitution of *Simon Mepham*, Archbiſhop of *Canterbury*, made in the Year 1328. which begins thus; *Quia quidam Maledictionis filij in Nubentium Solemnijs, Purificationibus mulierum, mortuorum exequijs, & alijs in quibus Dominus in Miniſtrorum ſuorum Perſonis ſolebat oblationum libamine populariter honorari ad unius denarij vel alterius modicæ quantitatis oblationem, populi devotionem reſtringere ſunt moliti*, &c. In this Place, upon the Words *Nubentium Solemnijs*, *Lyndwood* makes the following Comment. *Nubentium Solemnijs, de quibus patet ex. de Ferijs. C. Capellanus. Hæc enim Solemnia ceſſant certis temporibus*, viz. *A prima Dominica Adventus Domini uſq; ad Octavam Epiphaniæ incluſivè. Et a Septuageſima uſq; ad octavam Paſchæ incluſivè. Et a prima die Rogationum uſq; poſt Septem Dies Pentecoſten elapſos. Unde in Dominica Feſti Trinitatis licitè poſſint hujusmodi Nuptiæ celebrari ſive ſolemnizari ut patet in d. c. Capellanus ad fin. & ſic ſentit ibi* Anthonius de Butrio *dum dicit Alij incipiunt in Dominica in Albis, non Dominica poſt Pentecoſten. Et hi videntur Canonem violare.*

The

The Canon which *Lyndwood* refers to is a Canonical Epiſtle of *Clement* III. who was Biſhop of *Rome* from the Year 1187. to the Year 1191. It is put into the Body of the Canon Law among the Decretals Publiſhed by the Authority of Pope *Gregory* IX. *Tit.* ix. *de Ferijs. Cap.* 4. *Capellanus tuus, Frater Epiſcope, coram nobis ex parte tua propoſuit, quod cum Statuta Canonica declarent Nuptias tribus Septimanis ante Feſtum Nativitatis beati Johannis Baptiſtæ minime celebrari debere, quidam Hebdomadas illas abſq; interpolatione continuandas intelligunt. Alij vero inter Feſtum & ipſos volentes facere intervallum, illud dicunt ob reverentiam Feſtivitatis Pentecoſtes fuiſſe Statutum: Quæ in Septimanis iſtis ſolet intervenire quandoq;: Et ſic a tribus diebus Rogationum ante Aſcenſionem Domini inchoantes, uſq; ad Octavum Diem poſt Pentecoſten, illis hebdomadis computatis, illo tantum Spatio temporis celebrari Nuptias non permittunt, earum celebrationem inde nullatenus inhibentes. Quia vero conſulti fuimus, utra harum Opinionum potior videatur, nobis & fratribus noſtris apparuit, quod licet ea ſit Romanæ Eccleſiæ conſuetudo, ut quocunq; tempore Matrimonium contrahatur, conſenſu interveniente legitimo de Præſenti: Quia tamen a Septuageſima uſq; ad ſeptimum diem poſt Pentecoſten celebrari Nuptiæ non ſinuntur, & poſtea etiam tribus Septimanis vel pluribus ante Feſtivitatem Sancti Johannis ſine differentia celebrantur: Poſterior ſententia meliori & ſubtiliori nititur ratione: et ſive ſecundum Canones a Septuageſima uſq; poſt Octavas Paſchæ: ſive juxta conſuetudinem Eccleſiæ Romanæ uſq; poſt ſeptimum diem Feſti Pentecoſtes (quod caret Octavis) Nuptiæ ſuſpendantur: In Dominica quæ ſequitur & deinceps poſſunt licitè celebrari.*

The Gloſſary upon this Canonical Determination of Pope *Clement* refers us to three other Canons, which I will here ſubjoyn.

Concil. Laodicen. Can. lii. *Quod non oportet in Quadrageſima Nuptias, vel Natalitia celebrare.*

Concil. Trident. Seſſ. xxiv. De Sacramento Matrimonij Anathema xi. *Si quis dixerit, Prohibitionem Solennitatis Nuptiarum certis Anni temporibus Superſtitionem eſſe,* Anathema ſit.

Ibid. Inter Decreta de Reformatione Matrimonij Cap. x. *Antiquas Solennium Nuptiarum Prohibitiones ab Adventu Domini uſq; in Diem Epiphaniæ, & a feriâ quartâ cinerum uſq; in Octavam Paſchatis obſervandas, Synodum Præcipere Alijs temporibus Nuptias permittere.*

This is all I am at preſent able to find upon this Subject, and I do not think from any thing contained in theſe Canons that we are hereby obliged to defer the Marriage of ſuch as have been thrice Asked according to Law, till the time is expired wherein it is pretended that Marriage is Prohibited. And my Reaſons are theſe.

I. It does not appear that there is any Provincial Conſtitution of this Realm whereby we are prohibited to Marry at whatſoever time we think convenient. For it is manifeſt that this Canon, on which *Lyndwood* makes the fore-recited Commentary, has no manner of Relation to the time wherein Marriages may be Solemnized; the Deſign of it being only to oblige all Perſons to pay the accuſtomed Fees for Matriages, Churchings and Burials.

II. In the next Place, as to *Lyndwood*'s Comment, tho' he was an Eccleſiaſtical Judge and an excellent Canoniſt, yet his bare Comment cannot make a Canon: Which makes it neceſſary for us to examine the Authority on which he builds his Aſſertion, and that being no more than a Decretal Epiſtle of the Pope, cannot, as I conceive, oblige us by Vertue of the 25. *H.* 8. *Cap.* 19. §. *ult.* which only confirms the old Canons and Conſtitutions received here before that Act, and neither contrary to the Laws of the Land or the Prerogative Royal. If it be ſaid that *Lyndwood*'s Commentary is a Proof that the Canon of Pope *Clement* was here received, I anſwer that I do not think that ſufficient, becauſe *Lyndwood*'s Comment is not exactly

exactly agreeable to the Decree of the Pope. For *Lyndwood* allows Marriages may be Solemnized between the *Octaves of Easter*, now commonly called *Low Sunday* and *Rogation Sunday*, whereas *Clement* says the *Roman* Custom continued the Prohibition from *Septuagesima* to the Seventh Day after *Whitsunday*: And that the Canons only prohibited Marriage from *Septuagesima* to the *Octaves of Easter*; and besides says nothing of the Prohibition from *Advent* to the *Octaves of Epiphany*, which *Lyndwood* puts into his Comment. So that if the Custom of *Rome*, according to *Clement's* Decretal Epistle, was received here, then Marriage is prohibited from *Septuagesima* to the Day before *Trinity Sunday* inclusive: If the Canons which *Clemens* refers to were received here, then there is a Liberty left for Marriage to be Solemnized any time after *Low Sunday*: But in neither Case is any Prohibition of Marriage from *Advent* to the *Octaves of Epiphany*. Besides this Decretal of the Pope was not intended to settle the particular times wherein Marriage is forbidden, but only to satisfy a certain Bishop that it was not prohibited, either by the Custom of *Rome* or by any Canon, to be Solemnized upon *Trinity Sunday* or afterwards: And therefore neither makes for or against our present Purpose, but only shews that in the Church of *Rome*, and in some other Churches the Solemnization of Marriage was not used during certain times, but that different Churches had different Canons and Customs about this Matter. And that the Church of *Rome* made an Alteration of the Prohibited Times long before the Reformation, is evident from the Decree of the Council of *Trent* above cited, where the old Prohibitions there confirmed, are said to have been from *Advent* to the Day of the *Epiphany*, which cuts off seven or eight Days of the Term assigned by *Lyndwood*; and from *Ash Wednesday* to the *Octaves of Easter*, which is seventeen Days short of the Term set by *Lyndwood* and Pope *Clement*. Then there being no further Prohibition

from

from that time to *Advent*, there are ſeven Weeks cut off from the time aſſigned by Pope *Clement*, and three Weeks from that aſſigned by *Lyndwood*. Now tho' the Authority of the Council of *Trent* be nothing with us, yet their Teſtimony in ſuch a Caſe as this may be allowed, for they were not ſuch Fools as to call thoſe things ancient Cuſtoms which every body could remember the Original of. Wherefore when they call theſe times ſet down in their Canon *Ancient Prohibitions*, we may ſafely conclude they were the only times then known wherein Marriage was forbidden to be Solemnized, and conſequently the times aſſigned by *Lyndwood* did not continue to the Reformation. The times therefore when Marriage is forbidden to be Solemnized being ſo uncertain, I ſee not why we ſhould forbear to Marry Perſons when we think convenient, after the Banns have been thrice Publiſhed, till ſuch time at leaſt as our Ordinary has ſatisfied us particularly what are the prohibited times, without ſending us to *Lyndwood*, whoſe Authority in this Caſe is ſo uncertain. For, as I have ſhewed, *Lyndwood* ſends us to *Clement*'s Epiſtle, which determines nothing poſitively in the Matter. And the Gloſs upon the Decretal ſends us to the Council of *Trent*, which is of no Authority to us, and could be of none to Pope *Clement*, who lived 400 Years before it, and alſo cites the prohibited times different from what are there confirmed, as the ancient Cuſtom of the *Roman* Church. The Council of *Laodicea*, to which the Gloſs alſo ſends us, was before Pope *Clement* ſome Ages, but there Marriage is forbidden only in *Lent*, which is no more agreeable to the Pope's Epiſtle than *Lyndwood* or the Council of *Trent*. So that upon the Whole Matter we may conclude, that there being no prohibited time determined by unqueſtionable Authority, we are at Liberty to act in this Matter as we pleaſe.

However it is further urged that if there be no Canon, yet there is an undoubted Cuſtom in this Caſe, which in this Realm

Realm is equivalent to Law. But I believe that will be very difficult to be proved. For if all the Regiſters of *England* were to be ſearched, I queſtion if one will be found, for theſe laſt Forty Years, to go no higher, wherein ſeveral Perſons have not been Married by Banns within the times mentioned by *Lyndwood* as prohibited, and yet no Cenſure or Reproof has paſſed upon the Miniſter for Marrying at thoſe times. Nay I queſtion if they can prove from the Regiſters of any Eccleſiaſtical Court that any Clergy-man has been there cenſured for ſo doing. For I cannot but think if any ſuch thing had been, we ſhould have had the Caſe tranſmitted to us by *Godolphin* in his *Repertorium Canonicum*. At leaſt that ſome body at the Viſitation would have acquainted us with the Caſe, that ſo we might have been deterred from offending againſt the Order there given by ſuch an Example. So that as yet I ſee no Reaſon to perſwade my ſelf that there is any ſuch Cuſtom.

III. The Spiritual Courts will find no Fault with us if we Marry Perſons at any time of the Year, tho' it ſhould be *Aſh Wedneſday* or *Good Friday*, provided they bring us a Licenſe: And yet there is not one Word in any Licenſe I have ſeen (which all run in the ſame Form) intimating a Diſpenſation either with the Canon or Cuſtom for Prohibiting Marriage at certain times. From whence I think it reaſonable to conclude that they know of no ſuch Canon or Cuſtom; or elſe that we have no more Authority to Marry ſuch as bring a Licenſe, during the times pretended to be prohibited, than we have thoſe that are Asked. Wherefore if we may Marry thoſe that bring a Licenſe whenſoever they come to us, I ſee not why we may not not do the ſame by thoſe who have had the Banns three times publiſhed.

IV. I conceive that our Laws ſince the Reformation take no Notice of any times wherein Marriage is forbidden to be Solemnized without Licenſe, becauſe I cannot find any kind of Intimation

timation of any ſuch Matter in any of our Canons or Injunctions, or Articles of Viſitation ſince that time.

Thus I have given you my Opinion upon this Point; and if I am miſtaken in any thing, ſhall be very thankful to him that will inform me better. However, that I may ſet no Man an Example of Diſobedience, I purpoſe to obey the Order 'till the next Viſitation, hoping in that time I may either learn wherein I am here miſtaken, or elſe meet with ſomething more to confirm my preſent Judgment. *I am,*

SIR,

Your Affectionate Brother,

And Humble Servant.

FINIS.

LONDON: Printed for JOHN WYAT, at the *Roſe* in St. *Paul's Church-Yard.* MDCC VIII.

Some farther CONSIDERATIONS *on the Times wherein Marriage is said to be Prohibited: In a Second* LETTER *from one Clergy-man to another.*

REVEREND SIR,

MY Former *Letter*, about the Times wherein Marriage is said to be forbidden, being written somewhat hastily, and on a Subject which I know not that any Person has before particularly treated of, is so defective, that I think my self bound in Justice both to my Brethren of the Clergy and my self, to send you this also to supply what was wanting in that, especially since it is very probable that the same Order which was given us at the last Visitation may be renewed again at the next. Wherefore it behoves us to be throughly satisfied what is our Duty in this Point. For since the Publication of my former *Letter*, I have, by Conversation with my Brethren and otherwise, discovered that there are other Arguments used to prove there are Times prohibited, with relation to Marriage, beside those which I had taken notice of: and likewise, that I had been guilty of a great Mistake in what I had said about Licenses. Therefore I will first rectify my Mistake, and then proceed to consider those Arguments which are brought to prove that Marriage may not be celebrated at all times, which I have not already considered in my former *Letter*.

I said that *All Licenses run in the same Form*, and that *there is nothing in any of them intimating a Dispensation either with the Canon or Custom for Prohibiting Marriage at certain times*. Whereas in the Licenses granted out of our own Court, there is always this Clause, *Tempore etiamsi jure prohibito & interdicto*; and in the Licenses granted at *London*, and in some other Dioceses, the Clause is *Quocunq; anni Tempore*; but in the Licenses for the Diocese of *Ely* (if my Information be right) there is no such Clause at all: So that it is evident, *All Licenses do not run in the same Form*; and in some *Prohibited Times are particularly dispensed with*, and in others there is an *Intimation given of such Times*; and also, that there are some wherein there is not *so much as any Intimation of such*

Times. The Occaſion of this Miſtake was, that when I wrote my *Letter* I had no Licenſe by me granted out of any Court, having never Married any in either of my own Pariſhes by a Licenſe. Wherefore I conſulted Biſhop *Sparrow*, who in his *Collection of Canons*, &c. gives us *Exemplaria Licentiæ ſeu Facultatis Matrimonij abſq; trina Bannorum Promulgatione celebrandi in ſingulis Epiſcopatibus obſervanda*, An. 1597. In which there is no ſuch Clauſe as *Tempore etiamſi jure Prohibito & interdicto*, or *Quocunq; anni tempore*, or any thing of the like Nature. From the Title of this Exemplar, *viz. Singulis Epiſcopatibus obſervanda*; and the Place where it was put, *viz.* immediately after the Canons made in the Year 1597. I concluded that all Dioceſes had uſed this Form, as being ordered to do ſo by the Authority of Convocation, as I conceived. Having thus rectified my Miſtake, I will proceed to the Queſtion, and enquire whether there be any Canon or Cuſtom of this Realm, ſuch as we are bound to obey, that Prohibits Marriages to be Celebrated at any time.

It is certain that we are not bound to obey all the Canons which have been made for the Well-Government of the Chriſtian Church, in particular Provincial Councils, for *Lyndwood* ſays, *Tit. de conſuetud. C. Hujus autem verb. Provincia lit. d. in comment. Illi enim qui non ſunt de Provincia Statuentis, non artantur ut extra eam obſervent conſtitutiones per eum editas.* Neither are we bound to obſerve all the Canons of General Councils, not even of the Four firſt; for altho' the Doctrine of the Four firſt General Councils does appear to have been confirmed by Statute 1 *Eliz.* c. 1. yet I know no Act of Parliament or Conſtitution of our Church that has confirmed their Canons to make them any Part of our Eccleſiaſtical Laws.

In the next Place, neither are all the Canons in *Gratian* or the *Decretal*, even where they are not contrariant or repugnant to the Laws of the Land, or Prerogative Royal binding to us of this Realm. Yet I find ſome are of Opinion that the *whole Body of the Canon Law, as collected in the Decrees and the Decretal, is ratified and confirmed by* 25. H. 8. c. 19. *So far as it is not repugnant to the Laws or Prerogative.* But whatſoever ſome may think, the Act does certainly ſay nothing like it; for the Words of the Statute are, *And foraſmuch as ſuch Canons, Conſtitutions and Ordinances, as heretofore have been made by the Clergy of this Realm, cannot now at the Seſſion of this preſent Parliament, by reaſon of the ſhortneſs of the time, be viewed, examined and determined by the King's Highneſs, and xxxii Perſons to be choſen and appointed, according to the Petition of the Clergy. Be it therefore Enacted,* &c. *Provided that ſuch Canons, Conſtitutions, Ordinances and Synodals Provincial being already made*

made, which be not contrariant nor repugnant to the Laws, Statutes and Cuſtoms of this Realm, nor to the Damage or Hurt of the King's Prerogative Royal, ſhall now ſtill be uſed and executed as they were afore the making of this Act, 'till ſuch time as they be viewed, ſearched, or otherwiſe ordered and determined by the ſaid thirty-two Perſons, or the more part of them, according to the Tenor, Form and Effect of this preſent Act. Now foraſmuch as the Canons here mentioned have never yet been viewed, ſearched and examined by xxxii Perſons, and that Examination confirmed by Royal Authority according to this Act, therefore this laſt Clauſe of this Statute is ſtill in force. And the Queſtion now is, what Canons, Conſtitutions, *&c.* are confirmed by virtue of that Clauſe? which muſt undoubtedly be conſtrued by the Words going before in this Statute, *viz. Such Canons, &c. as heretofore have been made by the Clergy of this Realm.* And there is not a Word in this Statute that confirms either *Gratian* or the *Decretals*, or any other Collection of foreign Canons whatſoever.

However it muſt be acknowledged, that many Conſtitutions are of force here which were Enacted by a Foreign Authority, as *ſome Papal and Legatine Conſtitutions*: But then it muſt alſo be obſerved, that they did never bind here by Virtue of that Authority which Enacted them, but as the Parliament declared 25. *H.* 8. *C.* 21. *By Royal Sufferance and the free Conſent of the People in the Uſe and Allowance of them: And ſo they are not obſerved as the Laws of any Foreign Prince, Potentate or Prelate, but as the Cuſtomed and Ancient Laws of this Realm, originally eſtabliſhed as Laws of the ſame, by the ſaid Sufferance, Conſent and Cuſtom and no otherwiſe.*

Again, as 25. *H.* 8. *C.* 19. confirms all the Old Provincial Conſtitutions of this Realm, not repugnant to Law or Prerogative; ſo alſo it is allowed to confirm all Canons which have been made ſince that Act, or which ſhall hereafter be made by Convocation aſſembled by the Royal Writ, and confirmed by the Crown, as Biſhop *Stillingfleet* has proved from the Opinions of the Judges in this matter. *Eccleſ. Caſes*, p. 371, 372.

From what has been ſaid, I think it is evident that by 25. *H.* 8. *C.* 19. we are plainly obliged to yield an Obedience to all the old Provincial Canons collected by *Lyndwood*, as far as they are agreeable to the Laws, and to all the Canons made ſince that time in our Convocations collected by Biſhop *Sparrow*, except thoſe of 1640. which were made void by Statute 13. *Car.* 2. *C.* 12. And by virtue of 25. *H.* 8. *C.* 21. all ſuch Foreign Canons as have been allowed and executed here by Royal Sufferance and the Free Conſent of the People, are likewiſe Obligatory; but no other Foreign

reign Canons whatſoever: for ſo it has been declar'd by the Judges, who have ſaid, *That the Ancient Canon Law received in this Kingdom, is the Law of the Kingdom in ſuch Caſes*, but that *no Canons bind here but ſuch as are received by the Realm.* (*See* Stillingfleet's *Eccleſiaſt. Caſes*, p. 360, 361.) So that there is nothing either in our Acts of Parliament, or in the Opinion of the Judges which confirms the Canons, either in the *Decrees*, or the *Decretals*, any further than as they have been received, and allowed as ſuch, by the conſtant Uſage and Practice in this Realm. Upon which Account it is evident, that it is not ſufficient for any one to ſay, that ſuch a Canon is in *Gratian*, or in the *Decretal*, and not repugnant to the Laws or Prerogative; and therefore we are bound to obey it, unleſs it can alſo be ſhewed, that the ſame Canon has been received by this Realm, and conſtantly uſed and practiſed here, as an Eccleſiaſtical Law of this Kingdom.

Perhaps it may be thought that I have wandered from my Subject hitherto in this Enquiry which I have made, concerning what Canons we are bound to obey, and what not. But indeed, I found it neceſſary to do ſo, in order to ſhew, that *thoſe Canons which prohibit Marriage to be celebrated at certain times*, make no Part of thoſe Eccleſiaſtical Laws which we are bound to obey; being neither made heretofore by the Clergy of this Realm, neither have been received as ancient Laws of this Realm, by Sufferance, Conſent and Cuſtom, which is the Point I ſhall now endeavour to prove.

Now it is not ſo much as pretended, that there is any ſuch Provincial Conſtitution of this Realm, as prohibits Marriages at certain times, either before, or ſince, 25. *H.* 8. except one made in the Council of *Ænham*, before the Conqueſt, *An.* 1009. in which *Judicial Trials, and the Celebration of Matrimony are prohibited upon the Solemn Feſtivals, the Ember Weeks, from Advent to the Octaves of Epiphany, and from Septuageſima to the Fifteenth Night after* Eaſter. But *Spelman* ſays, That in a very ancient *Latin Tranſlation* of this Canon (whoſe Original is *Saxon*) there is no mention of the Celebration of Matrimony, but only a Prohibition of Law-Suits during theſe times. And the Reaſon given, both in the *Saxon* and *Latin*, for the enacting this is the ſame, *viz. Ut Pax & concordia Servarentur.* Which tho' a very good Reaſon againſt Law-Suits, is a very odd one againſt Matrimony; as if the Church it ſelf could ſuppoſe the Celebration of Matrimony to be a Diſturber of the Peace that ought to be preſerved among Chriſtians. Beſides, in the Confirmation of the Eccleſiaſtical Laws of St. *Edward*, by the *Conqueror*, where this Conſtitution, as well as others, is at large recited, *Celebratio*

Matrimonij is left out. But whether the Clauſe *Celebratio Matrimonij* were originally in the Canon, or have been added ſince by ſome Tranſcriber, I need not enquire, for I do not believe, that this Canon will now be judged to be of any more Force or Authority than any of our ancient *Saxon Laws*, but like them has been antiquated long ſince. Neither are the Times prohibited by it, the ſame with thoſe ſet down in *Lyndwood*, which we are ordered to obſerve. Our Obedience, therefore, to this Canon, is not ſo much as required by our Ordinary.

Lyndwood indeed does ſpeak of ſuch a Prohibition, and ſets down the Times which he ſays are prohibited in two Places of his Commentary; one of which I mentioned in my former Letter, and the other ſhall ſet down here. Under the Title *De Clandeſtina Deſponſatione*, there is a Conſtitution of *Simon Mepham*, which begins, *Quia ex contractibus, &c.* Upon the Word *Solemnizationem* in this Canon, *Lyndwood* makes the following Comment. *Solemnizationem, Quæ non debet fieri niſi poſt Banna Canonicè edita, & non poteſt fieri a prima Dominica Adventus uſq; ad Octavas Epiphaniæ excluſivè: Et a Dominica Septuageſima uſq; ad primam Dominicam poſt Paſcha inclusivè: Et a prima die Rogationum uſq; ad Septimum Diem poſt Pentecoſtes inclusivè: Licet quoad vinculum his diebus contrahi poſſit. Extra de feriis c. capellanus in fin.* I muſt here take Notice, that theſe two Notes of *Lyndwood*, *viz.* that cited in my former Letter, and this here are not exactly agreeable to each other: For in that his Words are *A prima Dominica Adventus Domini uſq; ad Octavas Epiphaniæ* Inclusivè: and in this it is *a prima Dominica, &c.* Excluſivè. And I ſuppoſe it will be very difficult to determine which of the two is moſt Authentick: But I have no need to inſiſt on ſuch a Miſtake; I hope I have better Arguments to depend upon.

Lyndwood's Commentary (as I obſerved in my former Letter) cannot either make or enforce a Conſtitution, he was but a private Perſon; and the moſt that can be inferred from theſe two Paſſages, is, that this was his Opinion: So that our only Buſineſs is to enquire on what Authority he founds his Opinion; for the Judgment of a private Perſon, in a Point of Law, is of no great Weight, farther than he can vouch Authority for what he ſays. Now as I obſerved in my former Letter, *Lyndwood* cites no other Authority than the Pope's Decretal, which I have there ſhewed, is not much to his Purpoſe, becauſe the Times prohibited by the Papal Decree are different from thoſe which *Lyndwood* ſays are forbidden, and conſequently that Decree is of no Authority, to confirm the Times when Marriage is pretended to be prohibited in this Realm. And the only Reaſon for which *Lyndwood* has referred us to that Decree,

ſeems

ſeems to be to ſatisfie us, that Marriage may be celebrated on *Trinity Sunday*, or any time after, before the Feaſt of St. *John Baptiſt*: So that in reality, *Lyndwood* produces no Authority at all; for the Times, he ſays, are prohibited but only for the Time when Marriage is not forbidden.

However we are told that there are Canons in *Gratian* to this purpoſe, upon which *Lyndwood*'s Commentary is founded, tho' he does not expreſly refer to them: And *Gratian*'s Collection of Canons, is confirmed by 25. *H.* 8. *c.* 19. as well as the Provincial Canons collected by *Lyndwood*. But I think, I have ſufficiently proved, from the very Words of that Statute, that it only confirms *thoſe Canons which have been heretofore made by the Clergy of this Realm:* And that 25. *H.* 8. *c.* 21. confirms all other Canons which have been *eſtabliſhed as Laws of this Realm by Sufference, Conſent and Cuſtom*; and that from hence our Judges, who are the Oracles of the Law, have declared that *no Canons bind here, but ſuch as are received by the Realm.* I will therefore put down *Gratian*'s Canons which relate to this Subject, and enquire whether they are received by this Realm or not. In that Book then, beſide the Canon of *Laodicea*, cited in my former Letter, we have theſe following. *Cauſ.* XXXIII. *Quæſt.* IV.

C. IX. In diebus Quadrageſimæ Nuptias celebrare non Licet. Unde ex Concilio Martini Bracharenſis, c. 48. *Non licet in Quadrageſimo Natalitia Martyrum celebrare: Sed tantum Sabbatho & Dominica pro Commemoratione eorum Oblationes offerri: Sed nec Natalitia nec Nuptias liceat in Quadrageſima celebrare.*

C. X. De eodem. Item ex concilio Ilerdenſi. *Non oportet a Septuageſima uſq; in Octavas Paſchæ, & tribus hebdomadibus ante Feſtivitatem Sancti Johannis Baptiſtæ, & ab Adventu Domini uſq; poſt Epiphaniam Nuptias celebrare Quod ſi factum fuerit, ſeparentur.*

C. XI. De eodem. Item Nicolaus Papa ad conſulta Bulgarorum, *cap.* 48. *Nec Uxorem Ducere, nec convivia facere in Quadrageſimali Tempore convenire poſſe Nullatenus arbitramur.*

Now as to the Canon of *Laodicea* cited in my former Letter, and that of *Martin* Biſhop of *Brachara*, and the Reſcript of Pope *Nicolas* here ſet down, they only prohibited Marriages in *Lent:* And therefore *Lyndwood*, whoſe Authority is urged to prove, that there was a Canon received in this Realm, to prohibit Matrimony at certain times, cannot found upon them, what he ſays on this Subject; becauſe he ſays Marriage is not to be ſolemnized at ſome other times beſide *Lent*, of which times theſe Canons take no Notice. Therefore till ſomething is urged

by

y way of Proof, to ſhew that any of theſe Canons have been received ere, I do not think there is any Occaſion for me to take further Notice f them. So there remains only the Canon of the Council of *Ilerda* or *erida* to be conſidered: For it is ſaid, that the Times prohibited by at Canon, are the ſame with thoſe in *Lyndwood*; and *Lyndwood*'s Comentary is an Evidence that it is received here. But I cannot be of this pinion; Becauſe

I. *Lyndwood* does not refer us to this Canon, in his Commentary, but ly to the Reſcript of Pope *Clement*, and therefore we have no Proof, at what he has laid down, as the Eccleſiaſtical Law, in this Caſe, is unded on this Canon: Beſides, *Lyndwood*'s Times are not exactly the me with the Times of the Council of *Lerida*: For in the Prohibition, hich begins with *Advent*, the Council prohibits no longer than till after e *Epiphany*; but *Lyndwood*'s Time goes a Week beyond this, *viz.* till fter the *Octaves* in one Place, and to the *Octaves* in the other. Again the ouncil ſays nothing of any Prohibition from *Rogation* to *Trinity-Sunay*, as *Lyndwood* does, only ſpeaks of three Weeks before *Midſummer*. it be ſaid, that theſe three Weeks before *Midſummer*, are determin'd by e Pope's Decree, to mean the three Weeks from *Rogation* to *Trinity-unday*; and *Lyndwood* refers to this Decree, to confirm what he has aid down: It may be anſwer'd, that if we are to be guided by the ope's Decree, we need have no Regard at all to thoſe three Weeks. or tho' it does ſay, that the Opinion which underſtands thoſe three Weeks, to be meant of the Time, from *Rogation* to *Trinity-Sunday*, is etter than that which ſuppoſes them to be meant of the three Weeks imediately preceeding the Feaſt of St. *John Baptiſt*; yet the Pope plainy determines, as if he judged, the Canons did realy prohibit Marriage o longer than till after the *Octaves* of *Eaſter*. As may be ſeen in the Decree it ſelf, in my former Letter.

II. It does not evidently appear, that the meaning of the Words *Nuptias celebrare*, in the Council of *Lerida*, and the Decree of Pope *Clement*; and *ſolemnizationem Matrimonii celebrare* in *Lyndwood*, is to forbid Perſons to be married, during thoſe times there mentioned. For notwithſtanding this Prohibition, the Pope, in the very Place where he ſpeaks of it, adds *Quocunq; tempore Matrimonium contrahatur conſenſu interveniente Legitimo de præſenti.* And *Lyndwood* likewiſe adds, *Licet quoad Vinculum his diebus contrahi poſſit.* If it be ſaid, that this only allows Eſpouſals, or a Contract, binding the Perſons contracting to a

ſubſequent Marriage: It may be anſwered, that *Sponſalia & Matrimonium* are always diſtinguiſhed in the Canon Law; and not only the Word *Matrimonium*, but the following *Conſenſu interveniente Legitimo de præſenti*, plainly determine it to Marriage. And can Marriage be contracted *Conſenſu interveniente Legitimo de præſenti*, unleſs that Conſent be given before the Miniſter, and he declares them Man and Wife, and gives them his Bleſſing, according to the Form preſcribed by the Church? I do not conceive that our Laws hold any other *Conſenſus* to be *Legitimus*: For can that be *Conſenſus Legitimus* which is not according to Law? If it be asked, What then is the meaning of *Nuptias celebrare* in theſe Places? I ſuppoſe, that as *non Oportet Natalitia celebrare*, in the Council of *Laodicea*, does not mean, that we may not even in Lent praiſe God for the excellent Gifts beſtowed on his Saints, whoſe Nativities fall out within that Time; and beſeech him to give us Grace to follow their good Examples; the Church having ever done ſo much, but only that we ſhould not celebrate thoſe Feſtivities with that external Mirth and Jollity with which we celebrate thoſe which fall out at another Seaſon of the Year: So *Non oportet Nuptias celebrare*, does not mean that Perſons may not contract Marriage, during certain Times; for the Pope and *Lyndwood* both ſay they may do it; or that the Prieſt may not then give them his Benediction, without which the Law allows not the Marriage to be valid, but only that Marriages, during thoſe Times, are not to be celebrated with thoſe Feaſtings, Merriments and Rejoycings, which are at other times allowable. Or *Nuptias celebrare* may mean, that Marriage ought not to be conſummated till theſe prohibited Times are over. For the Queſtion in *Gratian*, which this Canon of the Council of *Lerida* is deſigned to anſwer, is, *Si tempore Orationis quis valeat reddere conjugis debitum?* To which the Anſwer is Negative, *Non oportet Nuptias celebrare*, i. e. *reddere debitum*. So that this Canon ſeems plainly to be a Prohibition, reſpecting the Perſons to be married, and not the Miniſter that marries them; and therefore the Penalty annexed to it is Separation, which concerns not the Prieſt, but the Parties: Which is a plain Indication, that the Council did not conceive the Prieſt capable of breaking it, by giving the Marriage Benediction. I confeſs, indeed, that *Celebrare*, or *Solemnizare Matrimonium*, does, in the Canon Law, frequently refer to the Marriage Benediction; but if the Pope and *Lyndwood* be conſiſtent with themſelves, it cannot do ſo here; and if they are not conſiſtent with themſelves, how ſhall we learn from them what we ought to do in this Caſe.

III. Ad-

III. Admitting that this Canon of *Ilerda* does prohibit even the Marage Benediction during the Times therein mentioned, yet it is highly obable, tho' it be in *Gratian* that it was not received here. For notithſtanding *Gratian* was confirmed by the Pope and ordered to be read the Schools, yet all his Canons were not received as Law in all Places here the Papal Power was acknowledged and allowed, as is manifeſt om this very Canon of *Lerida*, which was not obligatory even at *Rome* here the Pope had as well a Temporal as a Spiritual Power, which is ore than ever was allowed him in this Realm. For the Council of *erida* forbids Marriages to be Celebrated *a Septuageſima uſq; in octavas aſchæ, & tribus hebdomadibus ante Feſtivitatem S. Johannis Baptiſtæ.* But e Pope ſays according to the Cuſtom of *Rome*, as may be ſeen in my rmer Letter, *a Septuageſima uſq; ad ſeptimum diem poſt Pentecoſten celebrari Nuptiæ non ſinuntur, & poſtea etiam tribus Septimanis ante Feſtum Johannis ſine differentia celebrantur*; which is ſufficient Proof that at *me* no regard was had to this Canon: And conſequently its being in *ratian* is no Proof that it was received here even at the time when the ope's Authority was at the higheſt in this Realm.

IV. It is certain and demonſtrable from the Words of this Canon that never was received here: For it Ordains, that if any are Married ithin the times therein prohibited, they ſhall be ſeparated, *Quod ſi ctum fuerit ſeparentur*; which muſt at leaſt imply, that they ſhould e ſeparated *a Menſa & Thoro*, 'till ſuch time as they had made Satisaction to the Church for the Breach of its Conſtitution. Now I would gladly know if any that urge the Authority of this Canon can ſhew that ver this Penalty was executed, or that any Canoniſt or Lawyer ever ſaid hat it might be executed in this Realm. How then can a Canon be udged obligatory in a Place where the Penalty annexed to the Breach f it never was or can be put in Execution?

However it is yet further urged, that if there be no Canon for theſe rohibited Times, there is a Cuſtom for them, and *Immemorial Cuſtom* s allowed on all Hands to have the *Force of a Law.* And this Cuſtom may be proved, not only from the general Licenſes wherein the Clauſe *Tempore etiamſi jure prohibito*, or *Quocunq; anni Tempore* is inſerted, but alſo from particular Licenſes granted on this occaſion, only to diſpenſe with a Marriage within the Times prohibited, after the Banns have been thrice publiſhed; which particular Licenſes are authoriſed by immemorial Cuſtom, as appears from the Table of Fees which was ſettled by

Arch-Biſhop *Whitgift*, in which Table the Fees which ſhall be paid for a Licenſe to Marry within prohibited Times after the Banns have been thrice publiſhed, are ſet down.

As to this Point of immemorial Practice or Cuſtom, I ſaid ſomething to it in my former Letter, which I ſhall not here repeat. But I think this Proof of that Cuſtom from the Form of Licenſes is inſufficient in ſeveral Reſpects. For,

I. I do not think that theſe Words *Tempore etiamſi jure prohibito*, or *Quocunq; anni Tempore*, have been put into Licenſes time out of Mind: I mean as far back as we have Regiſters of Licenſes ſtill extant. I cannot indeed fix the time when theſe Clauſes were firſt put in, having no opportunity to conſult any of our Eccleſiaſtical Regiſters, but to be ſure they were not there in the Year 1597. when the Form of Licenſes Biſhop *Sparrow* gives us was uſed in all Dioceſes. And to this Day, as I obſerved at the Beginning of this Letter, there are ſome Courts which put no ſuch Clauſe into their Licenſes. All therefore that theſe Clauſes can prove, is, that ſome Spiritual Courts would be glad to have it thought that there are ſuch things as Prohibited Times; but they are no plain Proof: For a Clauſe in a Writ cannot be allowed by our Laws to prove a Cuſtom or Right againſt contrary Practice; as appears by the *Præmunientes* Clauſe in the Biſhops Summons to Parliament, which tho' it has been for many Ages, and is ſtill inſerted into the Writ, yet gives the Inferior Clergy no Right at all to Sit in Parliament.

II. As to the particular Licenſe, which we are told the Spiritual Courts ſometimes grant for the Marrying of Perſons within the Times they ſay are Prohibited, altho' the Banns have been thrice Publiſhed, they are ſo rare, that I believe many of the Clergy have never heard of any ſuch Licenſe, and very few have ever ſeen one, and fewer yet have had one ſent to them: So that they argue nothing more than what I ſaid of the Clauſes in our general Licenſes, to ſhew that the Spiritual Courts are very deſirous we ſhould believe there are Prohibited Times. And if they can prevail with any one to take out ſuch a Licenſe, it brings Fees to them. But the Queſtion is not, Whether ſuch Licenſes may be granted if deſired? But, Whether a Man may not be Married within the Times which they pretend to be Prohibited, altho' no ſuch Licenſe be granted? For

III. I ſhall believe (till I am better informed) that it has been the general Practice in moſt places to Marry Perſons at any time of the Year without a Licenſe or Diſpenſation, after the Banns have been thrice publiſhed. That it has been ſo in our Dioceſe, I am ſatisfied by what I have heard from moſt of the Clergy I have converſed with upon this occaſion. And it was upon the Account of this general Practice that we had ſuch an Order given us at the laſt Viſitation. I remember a like Order about Eight Years ſince, but I had then neither Benefice nor Curacy, and therefore thought my ſelf not concerned in it: However, I heard many of the Clergy ſay they ſhould take no Notice of it; they found by their Regiſters that their Predeceſſors had Married by Banns in Times pretended to be prohibited, and they had done ſo themſelves, and ſhould continue to do ſo 'till they knew by what Authority they were prohibited. And ſome of them to my Knowledge did as they ſaid, and were never cenſured for it. I have likewiſe made ſome Enquiries concerning the Practice of the Clergy in other Dioceſes. And I am informed, tho' the Courts there do put ſuch Clauſes in their general Licenſes as are above mentioned; and alſo at ſome times grant particular Licenſes to Marry thoſe that have been Asked, and deſire to be Married in Times ſaid to be prohibited; yet many of the Clergy do Marry by Banns *extra tempora*, and no Notice is taken of it. The Inference which I draw from hence is, that the Argument from Cuſtom is of no Weight, becauſe the general Practice is contrary. If it be ſaid that there are a great many illegal things frequently practiſed, which perhaps are ſcarce ever puniſhed or cenſured: Yet it does not therefore follow that they may not be cenſured whenever our Superiors think fit to take Notice of them. I acknowledge it to be very true: But then they muſt be ſuch Practices as are againſt Poſitive Laws and Conſtitutions. Therefore if there be any Poſitive Law or Conſtitution of Force in this Realm to prohibit Marriages at certain times, I will readily grant, that how general ſoever the contrary Practice may have been, our Superiors may reinforce the Conſtitution and we ought to obey it: But if there be no ſuch Conſtitution, and I think I have proved there is none, and the Practice has been generally contrary, I cannot conceive how we ſhould be bound by Cuſtom in ſuch a Caſe. Let it be proved that where Marriages have been Celebrated within the pretended Prohibited Times, thoſe who have offended in this Caſe have been cited into the Eccleſiaſtical Courts, and there legally proceeded againſt for Diſobedience, this will go a great way towards the Proof of Prohibited Times by Cuſtom at leaſt if not by

Canon;

Canon; but if no Precedents can be brought for any ſuch Proceſs, as I am perſwaded there cannot, I do not conceive what kind of Cuſtom is to be pleaded in this Caſe. I am confident that cannot be a ſettled Cuſtom, and have the Force of a Law from Cuſtom, whoſe contrary has been the general Practice without any legal Cenſure. For I can't believe that a general Admonition, or Order given at a Viſitation, is to be called a Legal Cenſure or Judicial Proceeding, it being no more than a Declaration of ſuch things, as our Ordinary expects we ſhould obſerve: And it is not impoſſible but he may require of us ſuch things as we are not bound to.

IV. If there are Prohibited Times by Cuſtom, Pray what are thoſe Times? The Licenſes indeed ſpeak of ſuch Times, but do not acquaint us which they be. If they ſend us to *Lyndwood* he talks of no Cuſtom, but refers us to the Canons, which Canons I have ſhewed are not received here: Neither does it appear that thoſe Canons forbid the Marriage-Contract or Benediction during thoſe Times, but rather allow it. Where we ſhall be ordered next to look for theſe Prohibited Times, unleſs in our Almanacks, I know not: And I ſhall not ſay what Deference the Clergy ought to have in ſuch a Caſe as this for thoſe Celebrated Writers, whoſe Authority is not worth a Queſtion, much leſs an Anſwer. If therefore there are Prohibited Times by Cuſtom, but there be no Cuſtom or Authority to determine what are the Particular Times Prohibited, I think it is much the ſame as if there were no ſuch Times at all.

V. Suppoſing there were prohibited Times before the Reformation, it is highly probable, that they have not been obſerved, nor intended to be obſerved ſince that time: It being the general Opinion of thoſe who reformed from the Errors of the Church of *Rome*, that ſuch Prohibitions were ſuperſtitious. This appears from the Canon of *Trent*, cited in my former Letter, *Si quis dixerit, Prohibitionem ſolennitatis Nuptiarum certis anni Temporibus Superſtitionem eſſe*, Anathema ſit. For the *Anathema's* of that Council were generally levelled againſt the Doctrines maintained by the Proteſtants. And that this was the Doctrine of the *German Proteſtants*, is confirmed by *Chemnitius*, in his *Examen* of this *Anathema*. *Opinio quaſi ſanctitas illorum temporum non poſſet ferre Commixtionem Carnis in Copula Conjugali, Taxatur & reprehenditur.* And that our Divines of the Church of *England* were of Opinion, that there ought to be no prohibited Times for Marriage, appears plainly from the *Reformatio*

Legum

Legum Eccleſiaſticarum, made by Authority of Convocation and Parliament, by the Commiſſion of K. *Edward* VI. which tho' they were not confirmed by that Prince, and therefore wanted a legal Sanction, may yet ſerve to ſhew what was the Judgment of our firſt Reformers in this Point. In that Book then, *Tit. de Matrimonio cap.* 5. we have this Clauſe, *Tempora vero nulla ſunt excepta ad celebrandas Nuptias.* Alſo as we learn from *Heylin's Hiſtory of the Presbyterians*, p. 245. Book 7. §. 14. that in the Convocation aſſembled under Archbiſhop *Grindal*, An. 1575, amongſt the Articles then agreed upon, this was one. *That Marriage might be ſolemnized all times of the Year, after Banns publiſh'd.* It is true, the Queen ſtruck out this Article, and would not confirm it as ſhe did the reſt: However this ſhews the Opinion of the Church in this Point, and the Queen's not confirming of it, does not make the contrary to be Law, but only leaves the Matter as it ſtood before this Article was drawn up. And it is plain, from hence, that it was the Opinion of all the Biſhops and Clergy of the Realm, at that time, that Marriage might be celebrated without a Licence all the Year round. For it does not appear, that this Article was intended to introduce any new Cuſtom into the Church, but like many other Articles or Canons made in that Reign, to reinforce the Old Conſtitutions, and ſtop the Mouths of thoſe who would plead againſt them. It will therefore ſtill ſtand as an Evidence, that the Convocation did then believe there were no Times wherein Marriage ought to be prohibited; and tho' the Queen was of another Mind, yet nothing was done, by her, to prohibit Marriages at any time, but the Canons and Cuſtoms, relating to this Affair, were left as they were before this Convocation was held. Now we may reaſonably ſuppoſe, that the Biſhops and Clergy underſtood the Eccleſiaſtical Laws and Cuſtoms better than the Queen, it being their more proper and immediate Buſineſs. This Article being therefore no more than a Declaration of the Eccleſiaſtical Law, then in Force, was not ſo much invalidated by the Queen's Refuſal to confirm it; but that it may be ſtill a Teſtimony, that in thoſe Days Marriage might be celebrated at any time, after the Banns had been thrice publiſhed.

I confeſs, indeed, that ſome of our Divines, ſince the Reformation, as Biſhop *Coſins*, in the *Introduction to his Devotions*; and Doctor *Comber*, in his *Introduction to the Office of Matrimony*, do ſpeak of theſe prohibited Times, and tell us that *ſome of theſe Times are appointed for ſolemn Faſting and Abſtinence, and others for Holy Feſtivity and Joy, and therefore ought to be ſpent in ſuch ſacred Exerciſes without other Avocations.*

tions. And for this they cite *Eccleſ.* iii. 1. & 1 *Cor.* vii. 5. But if this be a ſufficient Reaſon for ſuch Prohibition, then all the *Fridays* in the Year, and all the Vigils, and the *Ember-Week* in *September*, ought to be brought within the prohibited Times, becauſe all theſe are Days of Faſting and Abſtinence, eſtabliſh'd as ſuch by our *Rubrick*; which is more than can be ſaid of the Time from *Advent* to the *Octaves* of *Epiphany*; or from *Septuageſima*, to the Beginning of *Lent*, or from the three *Rogation Days* to *Whitſuntide:* Alſo the other Sundays and Holy-days may be brought in by the ſame Reaſon. Neither are there antiquated Canons wanting, which were made in Synods of this Realm, to prohibit theſe Times. For among the Collections of *Egbert*, Archbiſhop of *York* (which ſeem to have been the *Saxon Canon Law*, ſays Doctor *Comber*) there is a Canon forbidding Marriages on *Sundays*, *Weneſdays* and *Fridays*. And the Council of *Ænham*, above mentioned, forbids Marriages on Solemn Feſtivals and *Ember-Weeks*. But whatſoever might be the Opinion of theſe two, or of any other learned and pious Divines, in this Point, it is certain, that our Church declares her ſelf of another Mind; and plainly ſhews her Opinion to be, that new-married Perſons are not leſs capable of duly celebrating the Holy Feaſts of the Church, than any others whatſoever. For what is the higheſt and moſt Solemn Act of Divine Worſhip in the Church. What is it that we eſteem a principal Duty to be performed on the Solemn Feſtivals, which we do not ſo generally do every *Lord's Day?* Is it not *the Celebration of the Lord's Supper?* And our Church, tho' it recommends frequent Communion, and ſeems to have ordered it to be celebrated on every *Sunday* and *Holy-Day*, yet does not enjoyn the Celebration of it oftner than thrice a Year (at leaſt, in ſuch Pariſhes where the Number of Communicants is not too great to receive at the ſame time) of which *Eaſter* to be always one, as appears from the *Rubrick*, after the Communion Service, and *Can.* 21. *An.* 1603. I ſay, it does not ſtrictly enjoyn it, ſo as to make the Miniſter an Offender, and liable to the Cenſure of his Ordinary, if he do not adminiſter it oftner than that every Pariſhioner may Communicate at leaſt thrice in the Year. This Injunction has commonly been eſteemed to require a Communion upon the three Solemn Feſtivals: And accordingly the general Practice has been to adminiſter the *Lord's Supper*, particularly at thoſe Times, and in many Country Pariſhes at no other Times. Now all theſe, according to *Lyndwood*, are Times wherein Marriage is prohibited. Yet our Church plainly ſuppoſes, and allows, that Perſons may be married at theſe Times when the Sacrament of the *Lord's Supper*

is to be administred; for it is ordered by the Rubrick, *That the New-married Persons should receive the Holy Communion at the time of their Marriage, or at the first Opportunity after their Marriage.* But how can they receive the Holy Communion at the Time of their Marriage, if they may not be married at any of those Times when the Minister is particularly obliged to celebrate the Lord's Supper? The Church therefore, in this Council and Exhortation to New-married Persons, seems so far from prohibiting any to be married upon the Solemn Festivals, or within the Times immediately preceeding them; such as *Lent*, *Advent*, or *Rogation*; that it appears rather to advise them to be married at those times when they may be assured, that they shall have an Opportunity to receive the Holy Communion at the time of their Marriage, or in a short time after.

VI. In *Sparrow*'s Collection we have the Injunctions of K. *Edw.* VI. and Q. *Eliz.* and the Canons and Constitutions of Five Convocations, *viz.* under Arch-Bishop *Parker*, An. 1571. under Arch-Bishop *Whitgift*, An. 1584. and 1597. under Dr. *Bancroft*, Bishop of *London*, An. 1603. and under Arch-Bishop *Laud*, An. 1640. Beside Arch-Bishop *Parker*'s *Admonition to all such as shall intend hereafter to enter the State of Matrimony Godly and agreeably to the Laws.* Also in the *Collection of Canons, Injunctions*, &c. Published and given to us by our present Most Reverend Metropolitan; beside some of the Constitutions already mentioned, we have his Late Majesty K. *William*'s Injunctions, *An.* 1694. and his Grace My Lord Arch-Bishop of *Canterbury*'s Circular Letter, *An.* 1695. In all which there are Rules given about Marriages, and yet not one Word of these Prohibited Times in any. Nay the Convocation of 1603. expresly mentions *unseasonable Times*, in the Sixty Second Canon; in the *Latin* it is *Tempore aliquo incongruo.* But when we come to examine what these *unseasonable Times* are, we find them to be only *unseasonable Hours*, such as are not *intra horas octavam & duodecimam antemeridianas.* Can we think that the Compilers of this Canon, would not here have taken Notice of unseasonable Times of the Year (as well as of the Day) if there had been any such? For this Canon (like as most of the Constitutions then made) is not introductory of any new Practice, but

only a Renewal of what had been before enacted in former Provincial Conſtitutions, for almoſt every Particular contained in it, is to be found in the Fourth Book of *Lyndwood's Provincial*; and in a Canon made in the Year 1597. *de Moderandis Indulgentiis pro celebratione Matrimonii.* Indeed it appears to have been the Deſign of this Convocation, to bring all ſuch Conſtitutions of the Church, as were neceſſary for the Direction of the Clergy, in the ordinary Parts of their Duty, into one Body. And therefore, when his Grace of *Canterbury* ſent us his *Collection of Articles, Canons,* &c. He put no Elder Canons or Injunctions into his Book, than theſe of 1603: So that the Silence of theſe Canons, as to prohibited Times of the Year, is an Argument, that the Compilers of them knew of no ſuch Times prohibited by any Canons received in this Realm; for certainly, if they had, they would have taken Notice of them, as well as of unſeaſonable Hours. But the *Latin* Canon has alſo theſe Words, *Etiamſi trina Bannorum Indictio præceſſerit, nec ulla proinde Diſpenſatio requiratur:* In the *Engliſh* Canon, it is *when the Banns are thrice asked, and no Licenſe in that reſpect neceſſary.* Yet if there be prohibited Times wherein Perſons cannot be married without a Licenſe, notwithſtanding they have been thrice asked, then a Licenſe may be neceſſary, altho' the Banns have been three times publiſhed, which is directly contrary to the expreſs Declaration of this Canon. Now is it reaſonable to imagine, that there ſhould be ſome times of the Year, wherein a Licenſe is neceſſary to be had after the Publication of the Banns; and yet that a Convocation, conſiſting of all the Biſhops and Arch-deacons of the Province, beſide many others having Eccleſiaſtical Juriſdiction, ſhould declare, that *when the Banns had been thrice publiſhed, there was no Licenſe required.* But becauſe it may be ſaid, that the Words, *in that reſpect,* intimate as if nothing more was meant, than that after the *Banns had been thrice publiſh'd,* there was no Occaſion for a Licenſe, with reſpect to the Banns; but there may, nevertheleſs, be Occaſion for one in another reſpect; I have therefore cited this Clauſe in the *Latin* Canon alſo, which is the Original in which theſe Canons were firſt compiled; and there I cannot think the Words liable to any ſuch Conſtruction; nor can they be conſtrued to imply, that a Licenſe may be neceſſary

ceſſary to diſpenſe with any thing elſe, after the Banns have been publiſhed. Now the Silence of theſe Canons would have been of great Weight; but ſuch a Declaration as this is Demonſtration.

VII. We have alſo in *Sparrow*'s Collection, Arch-Biſhop *Cranmer* and Biſhop *Ridley*'s Articles of Viſitation, and the Articles of Viſitation in the Firſt Year of Queen *Elizabeth*; and we have had Three Books of Viſitation-Articles from our preſent Moſt Reverend Metropolitan at three ſeveral Viſitations; and I have been informed by a Reverend Friend and Brother, that he has Seven ſeveral Books of Viſitation-Articles which he has examined, in all which Enquiry has been made concerning each Miniſter's Practice, with relation to Marriages, yet not one Enquiry whether he has Married any within theſe pretended Prohibited Times. Now it is very ſtrange that neither our Soveraign Princes in their Injunctions, our Synods in their Conſtitutions, and our Biſhops in their Viſitation-Enquiries, ſhould take any manner of Notice of theſe Prohibited Times, even where they give Directions and make Enquiries about Marriages, and yet that there ſhould lie an Obligation upon all the Clergy not to Marry any within theſe Times without a Licenſe ſo to do. One would have imagined that a Poor Pariſh-Prieſt might have thought himſelf ſafe, when he had conformed to all the Canons, Conſtitutions, Injunctions and Articles of Viſitation ſince the Reformation: For if we go further I cannot tell where we ſhall ſtop; and, for ought I know, an hundred old, antiquated obſolete Canons may be revived, which no body has thought of for ſome Ages. However I muſt acknowledge, that the ſame Reverend Brother who informed me of the Seven Books of Viſitation-Articles he had examined, did alſo inform me that there is a Book of Articles for the Arches (*An.* 163—) wherein Enquiry is made *whether the Miniſter has Married any without Licenſe in Times Prohibited, albeit the Banns were thrice Publiſhed?* But that ſuch an Enquiry ſhould be made but once and no more, is an Argument that this was not a thing forgot or overlooked, but rather that the Succeſſors of thoſe who made that Enquiry, were convinced that they had no Authority to examine into this Matter, otherwiſe it would not have been left out ſo generally (not to ſay ſo univer-

univerſally) in the Books of Viſitation-Articles ſince the Reformation.

VIII. Our Rubrick, which is confirmed by an Act of Parliament, and therefore is as much a Law of the Realm as any can be, requires no more than that the Banns be Publiſhed on three ſeveral Sundays or Holy-days; and then if no Impediment be alledged, gives the Parties ſo Asked, Leave to be Married, without ſo much as intimating that they are to wait 'till Marriage comes in. Now ſuppoſe any who have been thus asked come to their proper Miniſter to be Married, and he refuſes them, bidding them wait 'till the Time is out wherein it is pretended that Marriage is prohibited, which may happen to be Eight or Nine Weeks; before which time one of the Perſons refuſes to be Married to the other, and the injured Party brings an Action againſt the Miniſter for Damages ſuſtained by his Refuſal to Marry them when they deſired to be Married by him, having done all that the Law required them to do in order to their Marriage. Shall we think that *Lyndwood*'s Commentary, or the obſolete Canon of the Council of *Lerida*, or the pretended Cuſtom drawn from the Clauſe in the common Licenſes will be allowed in a Court of Judicature and at Common Law (where ſuch an Action muſt be tried) as a ſufficient Plea for ſuch a Refuſal? And that the Judge will not direct the Jury to give Damages againſt the Miniſter? Or will the Spiritual Courts give us Security to bear us harmleſs againſt any ſuch Action?

I ſhall ſay no more on the Subject at preſent, having, I think, ſufficiently proved that there is neither Canon nor Cuſtom of this Realm that prohibits Marriage to be Solemnized at any time; but ſhall crave leave to vindicate my ſelf from ſome Reflections made upon me on the Account of my former Letter. Some even of my Brethren have been ſo ſevere as to charge me with flying in the Face of Authority; and I have been Perſonally told, that I had taken an Oath to obey my Ordinary *in omnibus licitis & honeſtis*; this being therefore *licitum & honeſtum* I ought to obey, and not to diſpute. And when I ſaid that my Oath was to yield no more than *veram & Canonicam Obedientiam*, i. e. *veram Obedientiam ſecundum Canones in omnibus licitis & honeſtis*, they would hardly allow my Conſtruction

ction of the Oath, at leaſt they ſaid there was no material Difference whether *Canonicam* was taken into the Oath or not; for the Words *in Omnibus Licitis & Honeſtis* could not referr only to the Canons, for thoſe we were bound to obey by Law, but the Oath was intended to oblige us to an Obedience to our Ordinary, not only in things required by Law or Canon, but in all indifferent Matters not contrary to Law or good Manners; for if we be not bound to obey our Ordinary but where he commands what is already enjoined by Canon, what can be the Meaning of *Licitis & Honeſtis* in the Oath? However, I have that Opinion of the Judgment and Candour of all the Ordinaries of this Realm, that I do not believe any one of them ever made ſuch a Conſtruction of this Oath, or that they expect we ſhould pay them any more than a due Obedience, according to the Canons received in this Realm. And for the Words *Licitis & Honeſtis*, they are certainly put into the Oath, becauſe there are ſome Canons which have been formerly received here, which are not agreeable to the preſent Laws of this Kingdom. There are alſo many foreign Canons that never were received in this Church, and therefore it is not *licitum & honeſtum* for us to obey them. Upon which Account if our Obedience be required to any foreign Canon, it can be no flying in the Face of Authority, modeſtly to enquire whether it be received here or not: For if it be received here, it is certainly our Duty to obey it; and if it be not received here, it is as much our Duty not to obey it. Becauſe if it be a Canon not received here, and yet I think my ſelf and others bound to obey it, I muſt either ſuppoſe that I am obliged to obey a foreign Canon, which is contrary to the Oath of Supremacy; Or that my Ordinary may impoſe what he pleaſes, and yet I ought to obey, which is to give him a Legiſlative Authority, and of how dangerous Conſequence that is, I need not ſay. However I cannot but be ſorry that I am ſo unhappily drawn in to a Controverſy with my Superiors, for whoſe Perſons as well as Office, I ever had and ſhall have a particular Reſpect. But after all, this Order did not (as I underſtand) proceed from my chief Ordinary, our moſt Reverend Dioceſan and Metropolitan; there was no Intimation given that he had commanded any ſuch thing as was required of us at the laſt Viſitation, and I am ſure when he viſited us himſelf

himself in Person, he said not one Word of this Matter; if he had, the great Honour and Veneration I have for him, beside my Personal Obligations to his Grace would have compelled me to have been silent, notwithstanding I had differed from him in my Private Opinion.

And when I wrote my first Letter, I did not know that our Arch-deacon (since deceased) was concerned in the Matter; a Person whose great Learning, and other excellent Accomplishments made him deservedly to be both esteemed and loved, not only by the Clergy within his Jurisdiction, but by all that had the Happiness of his Acquaintance: So that I was exceedingly concerned, when I understood that I had so unfortunately, tho unwittingly written against any thing was said by him. For at the Visitation, where I paid my Attendance, there was no Arch-deacon present, nor Vicar-general, nor Commissary, nor Official; but only a Deputy or Surrogate, who did not pretend, that the Order he gave us, on this Occasion, proceeded from any higher Authority than his own. So that when I wrote my first Letter on this Occasion, I conceived that the Charge had been given to us only at the Instigation of some, who might think the marrying by Banns, within these pretended prohibited Times, was an Hindrance to their Fees; nor do I yet believe that there was any other Motive for such an Order. However, since the Surrogate at that Time, had, and exercised the ordinary Jurisdiction of our Commissary or Official, I treated him with the Respect due to an Ordinary, and called him by that Name in my Letter, promising also to obey his Order till the next Visitation: Neither would I at all have disputed his Injunction, if it had been according to the Received Canons of this Church. I honour all my Superiors, both in Church and State, and think it my Duty to do so. But I do not conceive that this Honour I have for them, requires me to yield implicit Obedience to any. It is God's great Blessing to this Nation, above many others, that our Obedience is required only to the Laws; and where there is no Law we are guilty of no Transgression. I have therefore, without reflecting upon any Person whatsoever, enquir'd whether there be any Law (for our Canons and Customs Ecclesiastical, are Laws to us) which obliges us not to marry in

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Times ſaid to be prohibited; and if there be none (as I think I have proved there is not) it can be no Undutifulneſs to our Superiours, to ſay that we hope they will not exact ſuch an Obedience from us, as the Law does not enjoyn. I am,

REVEREND SIR,

October 28. 1708.

Your Affectionate Brother,

And Humble Servant,

THO. BRETT.

FINIS.

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